

TCEQ DOCKET NO. 2023-0858-DIS

PETITION BY BAHAMAS LAGUNA	§	BEFORE THE
AZURE, LLC FOR THE CREATION OF	§	
ROCKWALL COUNTY MUNICIPAL	§	TEXAS COMMISSION ON
UTILITY DISTRICT NO. 11 IN	§	
ROCKWALL COUNTY, TEXAS	§	ENVIRONMENTAL QUALITY

**ROCKWALL COUNTY’S REPLY
TO RESPONSES TO REQUEST FOR CONTESTED CASE HEARING**

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (“TCEQ”):

Pursuant to 30 Texas Administrative Code (“TAC”) § 55.254(f), Rockwall County (“County”) files this Reply to the Responses to Hearing Requests filed by Bahamas Laguna Azure, LLC, a Wyoming limited liability corporation (“Bahamas”), the Executive Director (“ED”), and the Office of the Public Interest Counsel (“OPIC”) to the County’s Request for a Contested Case Hearing on the Petition (“Petition”) for the Creation of Rockwall County Municipal Utility District (“MUD”) No. 11.

I. INTRODUCTION

The County¹ has requested that the Commissioners of the TCEQ grant its request for a contested case hearing regarding the issues raised in the County’s Request for a Contested Case Hearing (“County’s Request”) dated February 14, 2023, and received by the TCEQ on February 21, 2023. Under the standards in 30 TAC § 55.256, the County clearly is an affected person with a justiciable interest in the Petition that is not common to members of the general public that is related to a legal right, duty, privilege, power, and economic interest affected by the Petition. Accordingly, a contested case hearing is warranted in this case.

¹ Bahamas states that “a Rockwall County . . . public official” submitted a request for a contested case hearing. *See* Bahamas’ Resp. at 1; *see also* Bahamas’ Resp. at 2-3 (“hearing requests on letterhead of the Rockwall County Criminal District Attorney”). In fact, the County submitted the request. *See* County’s Request at 1-2; *see also* the first paragraph of the next section of this Reply.

II. REPLY TO BAHAMAS' RESPONSE TO THE COUNTY'S HEARING REQUEST

A. The Rockwall County Commissioners duly authorized the filing of the request for a contested case hearing

Bahamas first argues that there is no indication that the Rockwall County Commissioners Court authorized the filing of the County's Request. *See* Bahamas' Resp. at 10. Bahamas cites no rule or law requiring the County to show the TCEQ that its Commissioners Court authorized the filing of the County's Request. In fact, the Rockwall County Commissioners voted unanimously to authorize the filing of the County's Request. *See* Minutes of the Regular Meeting of the Commissioners Court of Rockwall County on February 14, 2023, at pages 7-8, which is available at the County's website at: <https://www.rockwallcountytexas.com/821/Past-Commissioners-Court-Meetings>.

B. The County easily qualifies as an affected person entitled to a contested case hearing

Bahamas then claims that the County has not provided any discernible, specific concerns or demonstrated in any way how the County might be an affected person with a personal justiciable interest. Bahamas further argues that alleged injuries couched in terms of potentialities or events that may happen are mere speculation that falls short of establishing a justiciable interest. *See* Bahamas' Resp. at 7. Bahamas also argues that a hearing requestor is not an affected person if the proposed activity will have minimal effect on the person's health, safety, use of property, and use of natural resources. *Id.*

To support these arguments, Bahamas cites two cases. *Id.* (citing *Texas Disposal Sys. Landfill, Inc. v. Tex. Comm'n on Env'tl. Quality*, 259 S.W.3d 361, 363-64 (Tex. App.—Amarillo 2008, no pet.) and *Tex. Comm'n on Env'tl. Quality v. Sierra Club*, 455 S.W.3d 228, 240 (Tex. App.—Austin 2014, pet. denied)). Neither case involved a governmental entity, such as a county,

with many important governmental interests at stake. Accordingly, the TCEQ should disregard these cases. Furthermore, as shown below, the County has specific concerns and is an affected person with a personal justiciable interest in Bahamas' Petition to create a MUD in the County.

The TAC requires an affected person's personal justiciable interest to be related to a legal right, duty, privilege, power, or economic interest affected by the application belonging to the requestor and not an interest common to members of the general public. *See* 30 TAC § 55.256(a). The TAC expressly provides that governmental entities, including local governments, may be affected persons if they have authority under state law over issues contemplated by the application. *See* 30 TAC § 55.256(b). Furthermore, the TAC explicitly requires the TCEQ to consider all relevant factors, including: (1) whether the interest claimed is one protected by the law under which the application will be considered; (2) distance restrictions or other limitations imposed by law on the affected interest; (3) whether a reasonable relationship exists between the interest claimed and the activity regulated; (4) likely impact of the regulated activity on the health, safety, and use of property of the person; (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

The County is not required to show that it will ultimately prevail on the merits of its claims to be an affected person; instead, the County simply must show a potential harm or justiciable interest that would be affected by the Petition. *See United Copper Ind. v. Grissom*, 17 S.W.3d 797, 803 (Tex. App.—Austin 2000, pet. dismissed) (analyzing identical standard in 30 TAC § 55.29(a) and citing *Heat Energy Advanced Tech., Inc. v. West Dallas Coalition for Env'tl. Justice*, 962 S.W.2d 288, 289 (Tex. App.—Austin 1998, pet. denied) (analyzing identical standard in Section 5.115(a) of the Texas Water Code)).

Here, the County easily qualifies as an “affected person” under 30 TAC § 55.256. Bahamas’ Revised Petition seeks to create a MUD that proposes to: (1) construct, maintain, and operate a waterworks system for domestic and commercial purposes; (2) construct, maintain, and operate a sanitary sewer collection, treatment, and disposal system for domestic and commercial purposes; (3) construct, install, maintain, purchase, and operate drainage and roadway facilities and improvements; and (4) construct, install, maintain, purchase, and operate facilities, systems, plants, and enterprises of such additional facilities as shall be consonant with the MUD’s purposes. *See Revised Pet. for the Creation of Rockwall County MUD No. 11 at ¶ IX.* Bahamas also states that the MUD will provide for the purchase, construction, extension, improvement, maintenance, and operation of “fire suppression facilities, parks and recreational land and facilities, and roads or improvements in aid thereof.” *See Revised Pet. for the Creation of Rockwall County MUD No. 11 at ¶ X.* The MUD will be located entirely within the County.

Because the proposed MUD will be located entirely within the County, the proposed MUD will unquestionably negatively affect the County’s legal rights, duties, privileges, powers, and economic interests in many ways that are not common to the general public. In particular, the County has numerous legal rights, duties, and powers that are uniquely and negatively affected by the proposed creation of the MUD:

- Texas Constitution, art. 11, § 2 (layout, construction, and repair of county roads);
- Texas Local Government Code §§ 232.001-.011 (authority to regulate subdivisions, including the construction of roads, water availability, on-site sewage facilities, and other aspects of subdivisions);
- Texas Transportation Code § 251.016 (general control over roads, highways, and bridges); § 251.003 (rulemaking authority over construction and maintenance of public roads);
- Texas Local Government Code § 552.101 (regulation of water lines in county right of way);
- Texas Health and Safety Code § 121.003 (enforcement of laws to protect public health);
- Texas Health and Safety Code Chapter 366 (license procedures for private sewage facilities);

- Texas Water Code § 26.171 et seq. (enforcement of water quality controls and inspection of public waters);
- Texas Local Government Code § 352.001 et seq. (fire protection for county residents and adoption of fire code);
- Texas Government Code Chapter 418 (authority over emergency management);
- Texas Health and Safety Code Chapter 343 (abatement of public nuisances);
- Texas Local Government Code § 561.003 (flood control);
- Texas Local Government Code § 562.016 (authority to own, operate, or acquire wastewater facilities).

The members of the general public do not have these legal rights, duties, or powers. These legal duties give the County a personal justiciable interest. As the County has numerous legal rights, duties, and powers that are potentially negatively affected by the proposed creation of the MUD, the County qualifies as an affected person under 30 TAC § 55.256(a).

In addition, the County clearly has authority under state law over many issues contemplated by Bahama's Petition. Thus, the County qualifies as an affected person under 30 TAC § 55.256(b).

Furthermore, the six factors listed in 30 TAC § 55.256(c) weigh heavily in favor of finding the County to be an affected person. First, the interests claimed by the County are ones protected by the law under which the application will be considered. Here, the County has many legal rights, duties, and powers protected by the laws cited above. Put another way, the County has a strong interest in preserving and enhancing the public health, safety, and welfare of County residents and visitors, and the Legislature has passed many laws over the decades that protect the County's ability to do so.

Second, distance restrictions or other limitations imposed by law on the County's interests weigh in favor of the County. Although the U.S. and Texas Constitutions and the Legislature have placed some limits on the County's exercise of its legal rights, duties, and powers, those limits do not impair the County's many interests in protecting the public health, safety, and welfare of the area where Bahamas proposes to create a MUD. In particular, no law imposes any express distance

restrictions on the County's interests. Any distance analysis should be based on whether the proposed MUD's boundaries are inside or outside of the County. As the proposed MUD would be located entirely in the County, there is no distance between the MUD and the County.

Third, a reasonable relationship plainly exists between the County's many interests in protecting public health, safety, and welfare and the MUD's many proposed activities. The Petition proposes the construction and operation of a waterworks system; a sanitary sewer collection, treatment, and disposal system; drainage and roadway facilities and improvements; fire suppression facilities; parks and recreational land and facilities; and facilities, systems, plants, and enterprises of such additional facilities as shall be consonant with the MUD's purposes. *See* Revised Pet. for the Creation of Rockwall County MUD No. 11 at ¶¶ IX, X. All of these proposed systems, facilities, and improvements will affect the County's interests.

For example, Bahamas proposes to provide access to the proposed MUD "via a proposed collector road to Crenshaw Road and another collector intersecting FM 548." *See* TCEQ Technical Memorandum at 1. However, no part of the proposed MUD comes close to abutting FM 548. *See* ED's Backup Documents at pp. 21, 24, and 38 (survey maps of proposed MUD), and p. 42 (aerial map of proposed MUD). The proposed MUD "will fund roadway improvements including major thoroughfares and collector roads *within its boundary*." *See* TCEQ Technical Memorandum at 4 (emphasis added). So there will need to be a collector road outside of the proposed boundaries of the MUD to connect the MUD with FM 548, but the MUD will only fund roadway improvements within its boundary. Bahamas has not shown how the MUD will acquire or otherwise obtain the land for the collector road between the MUD and FM 548, nor has it identified any way for the MUD to pay for the construction and maintenance of that road. In addition, Bahamas has not

shown that either Crenshaw Road or FM 548 can reasonably support the additional traffic that the proposed development in the MUD will generate.

Thus, the County has an interest in ensuring that sufficiently wide and well-constructed roads would provide adequate access to the proposed MUD so that the area can be safely served by law enforcement, fire, and ambulance services.

In addition, the Preliminary Engineering Report indicates “*most* proposed development [in the MUD] will be outside the 100-year floodplain.” *See* TCEQ Technical Memorandum at 4 (emphasis added). That means some development in the MUD will be inside the 100-year floodplain. However, Bahamas apparently does not plan to implement any mitigation strategies to prevent the properties developed in the 100-year floodplain from being adversely affected by a 100-year flood: “[I]n areas where development encroaches upon the floodplain, a mitigation strategy will be included in the flood study and implemented to assure there are no adverse impacts to *downstream or adjacent properties.*” *Id.* (emphasis added). Thus, the County has an interest in protecting the life and property of lands developed in the floodplain.

Fourth, the proposed MUD’s many activities will likely impact the health, safety, and use of property of many residents of and visitors to the County. The proposed MUD would provide water services, wastewater, roads, drainage facilities, and fire suppression facilities within a 430-acre area. Each of these services and facilities clearly impact the health, safety, and use of property of many residents of and visitors to the County. For example, Bahamas does not propose to connect to the City of Royse City’s water system or propose to contract with a regional water facilities provider. *See* Revised Pet. for the Creation of Rockwall County MUD No. 11 at ¶ XI. Instead, Bahamas proposes “to supply water service for District residents from the District’s own water supply and distribution system.” *See* TCEQ Technical Memorandum at 3. Developers “who

choose not to access the already existing utilities . . . over-develop their subdivisions, resulting in stress to our . . . water.” *See* County’s Request at Ex. A (statement of Rockwall County Judge Frank New).

Fifth, the proposed MUD will likely have an adverse impact on the use of an important natural resource: groundwater supplies. As shown above, Bahamas does not propose to connect to the City of Royse City’s water system or propose to contract with a regional water facilities provider. Instead, Bahamas proposes to supply water service for MUD residents from the MUD’s own water supply and distribution system. To do so, Bahamas plans to “construct and operate one water plant with water wells.” *Id.* Bahamas estimates there will be 1,145 single-family connections in the 430-acre MUD. *Id.* “According to the preliminary engineering report, the *domestic* water usage by the District will not contribute significant to the rate of subsidence.” *Id.* at 4 (emphasis added). However, the proposed MUD plans to construct, maintain, and operate “a waterworks system . . . for *domestic and commercial purposes*.” *See* Revised Pet. for the Creation of Rockwall County MUD No. 11 at ¶ IX (emphasis added). Bahamas has not provided any evidence that there is sufficient groundwater for commercial purposes in addition to domestic purposes. Thus, the County clearly has a strong interest in ensuring that all persons living and working in the MUD have access to a sufficient supply of water at all times.

Sixth, as shown above, the County clearly has considerable statutory authority over and a strong interest in the issues relevant to Bahamas’ Petition. For all these reasons, the County easily qualifies as an affected person under the factors listed in 30 TAC § 55.256(c).

C. The law allows the County to file requests for contested case hearings

Bahamas next alleges that the Legislature has determined that “a county’s limited participation in MUD creation petitions should be limited to submitting comments to TCEQ.”

Bahamas' Resp. at 11-12. It bases that argument solely on a provision in the Texas Water Code, which gives a county express statutory authority to submit to TCEQ "any findings, conclusions, and other information that the commissioners court thinks would assist the commission in making a final determination on the petition." Tex. Water Code § 54.0161(b)(2). Nowhere does that provision, any other provision in the Water Code, or any other state law prohibit a county from filing requests for contested case hearings. In fact, the Water Code expressly allows a county to "make a recommendation regarding the creation of the proposed district." Tex. Water Code § 54.0161(b). That is exactly what the County did when it submitted its request for a contested hearing.

Moreover, the definition of "person" in Title 30 of the TAC includes a county: "Person-- An individual, corporation, organization, *government or governmental subdivision* or agency, business trust, partnership, association, or any other legal entity." 30 TAC § 3.2(25) (Definitions) (emphasis added). In addition, a county can be considered an affected person entitled to file a request for a contested case hearing under 30 TAC ch. 55:

The following words and terms, when used in Subchapters D - G of this chapter (relating to Applicability and Definitions; Public Comment and Public Meetings; Requests for Reconsideration or Contested Case Hearing; and Requests for Contested Case Hearing and Public Comment on Certain Applications) shall have the following meanings. Affected person--A person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest. The determination of whether a person is affected shall be governed by §55.203 of this title (relating to Determination of Affected Person), or, if applicable under §55.256 of this title (relating to Determination of Affected Person). Notwithstanding any other law, *a state agency, except a river authority, may not file a request for a contested case hearing or request for reconsideration, nor may it be considered an affected person or named a party*, or otherwise contest of a permit or license on an application received by the commission on or after September 1, 2011 unless the state agency is the applicant.

30 TAC § 55.103 (Definitions) (emphasis added). Thus, the TAC does not exclude a county from being considered an “affected person” or filing a request for a contested case hearing.

Furthermore, the TCEQ’s administrative practice for many years has been to allow counties to file requests for contested case hearings. A cursory search of the Commissioners’ Integrated Database shows many filings by multiple counties requesting contested case hearings on petitions for the creation of MUDs. See <https://www14.tceq.texas.gov/epic/eCID/>.

As the County is plainly an “affected person,” a contested case hearing on issues raised in its hearing request is warranted under 30 TAC § 55.256.

III. REPLY TO THE ED’S RESPONSE TO THE COUNTY’S HEARING REQUEST

The County agrees with the ED’s recommendations that the TCEQ: (1) find that the County complied with 30 TAC 55.251(c), (2) find that the County is an affected person, and (3) grant the County’s request for a contested case hearing.

IV. REPLY TO OPIC’S RESPONSE TO THE COUNTY’S HEARING REQUEST

The County agrees with the OPIC’s recommendations that the TCEQ: (1) find that the County is an affected person, and (2) grant the County’s request for a contested case hearing.

V. CONCLUSION

The County respectfully requests the TCEQ to: (1) find that the County complied with 30 TAC 55.251(c) for the reasons given in the ED’s Response, (2) find that the County is an affected person, and (3) grant the County’s request for a contested case hearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on August 28, 2023, a true and correct copy of *Rockwall County's Reply to Responses to Request for Contested Case Hearing* has been forwarded to the persons listed in the below mailing list via electronic mail.

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